STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

CENTRAL ILLINOIS LIGHT COMPANY d/b/a AmerenCILCO	))	
CENTRAL ILLINOIS PUBLIC SERVICE COMPANY d/b/a AmerenCIPS	))	
	)	Docket No. 07-0539
ILLINOIS POWER COMPANY d/b/a AmerenIP	))	
Approval of the Energy Efficiency and Demand-Response Plan	))	

BRIEF ON EXCEPTIONS OF THE ILLINOIS

DEPARTMENT OF COMMERCE AND ECONONIC OPPORTUNITY

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I. INTRODUCTION AND SUMMARY

The Illinois Department of Commerce and Economic Opportunity ("the Department"), by and through its Attorneys submit this Brief on Exceptions in accordance with Section 200.830 of the Rules of Practice of the Illinois Commerce Commission ("Commission" or "ICC"), 83 Ill. Admin. Code §200.830 and the schedule established by the Proposed Order issued on January 25, 2008.

P.A. 95-0481, which established Section 12-103 of the Illinois Public Utilities Act (the Energy Efficiency Portfolio Standard) and led to the commencement of these proceedings, requires a unique approach that must be reflected in the Commission's Orders in Dockets 07-0539 and 07-0540. Implementation of the Energy Efficiency Portfolio mandate will take a coordinated effort between all parties to dockets 07-0539 and 07-0540 to ensure that the goals of the statute are met.

The Department respectfully requests that the Commission consider and accept the Department's exceptions that address this need for consistency.

II. EXCEPTIONS

A. DCEO's Portion of the Overall kWh savings goal.

The Department is concerned that the section on "DCEO's Role" is inconsistent between the two proposed orders. It is very important that this section, in particular, be consistent; otherwise DCEO is put in the untenable position of trying to offer common programs across the two service territories while meeting conflicting energy savings targets. The ALJ's Proposed Order for 07-0539 contains the following sentence:

> "As a result of this methodology, the statutory energy efficiency goals have been divided between Ameren and DCEO, with Ameren having responsibility for reaching 79% of the total statutory energy efficiency goals and DCEO 21% in each of the three Plan years." (Proposed Order at page 15-16)

This sentence is not consistent with DCEO's estimated kilowatt hour (kWh) savings in its Plan (see DCEO Ex. 1.1 at 2 and DCEO Ex. 1.0 at 12), nor does it match the language on DCEO's estimated kWh savings in the ALJ's Proposed Order for 07-0540 (at p. 19-20). If this sentence remains in the Order, it may be construed as committing DCEO to kWh savings different from those in its Plan (DCEO Ex. 1.0 at 12 and DCEO Ex. 1.1 at 2) and different in the two service territories.

DCEO recommends the following changes to ensure that its energy savings goal is based on its evidence submitted in this docket, is attainable and is consistent between the two utilities. These changes will enable DCEO to offer consistent programs to customers of Ameren Illinois and Commonwealth Edison.

The Department, therefore, respectfully requests that pages 15-16 of the Proposed Order be revised as follows:

"~~As a result of this methodology, the statutory energy efficiency goals have been divided between Ameren and DCEO, with Ameren having responsibility for reaching 79% of the total statutory energy efficiency goals and DCEO 21% in each of the three Plan years. (DCEO Ex. 1.0 at 12).~~ Section 12-103(e) also requires that "[a] minimum of 10% of the entire portfolio of cost-effective energy

efficiency measures shall be procured from units of local government, municipal corporations, school districts, and community college districts," and that DCEO "coordinate the implementation of such measures." (220 ILCS 5/12-103(e)). The evidence established that Ameren and DCEO have agreed that DCEO would be responsible for presenting and implementing the portfolio of energy efficiency measures targeted at low-income households as is required by Section 12-103(f)(4). (*Id*. at 12-16).

ICF performed the TRC test on the combined portfolio of the utility plus DCEO portfolio of programs and the portfolio passes the test. However, low-income programs are not subject to this test. (220 ILCS 5/12-103(f)(5)).

After coordinating with the utilities, DCEO, ComEd and Ameren agreed that DCEO's efficiency programs will concern three major areas: the public sector, the low-income sector and "market transformation" (training, education, etc.) programs. To that end, funding was divided based on the 75/25% split of program costs and the utilities and DCEO further agreed that the DCEO share of the annual kilowatt savings targets would be less than 25% with the relevant utility making up the difference. DCEO's programs will account for around 20% (ranging from 18.6%- 21.5%) of the total kilowatt savings during the first three planning years. (DCEO Ex. 2.0 at 7). In any event, the Ameren Illinois Utilities and DCEO intend to work together to achieve the load reductions specified in the Act. (Ameren Draft Proposed Order at 39).

This kilowatt savings split allows DCEO to fund less cost effective (such as low-income) or difficult to measure, but necessary, programs. DCEO's contribution, plus the utility kilowatt savings projections, meet or exceed the statutory requirements as presented in Ameren's and DCEO's testimonies. The evidence established that DCEO's portion of the portfolio is designed to support the ongoing nature of the escalating reduction targets (2% reductions by 2015 and continuing thereafter) by incorporating incentive programs with longer term impacts and market transformation programs—each of which are designed to develop a robust energy efficiency services industry necessary to meet the future statutory requirements. (DCEO Ex. 1.1)."

B. Future DCEO Submissions.

The Department is a discreet entity in these proceedings and must have the ability to manage and implement its portion of the portfolio in a manner that will ensure its ability to contribute to the overall savings goals. The potential exists, evidenced by the differences between the proposed orders in Dockets 07-0539 and 07-0540, that if the Department files its plan in separate dockets, that it may be required to treat its programs

and plan differently in two areas of the state simply because two separate proceedings may result in two inconsistent orders.

The Department is amenable to making joint filings with the corresponding utilities; however the Order in this Docket should address this need for a flexible but consistent approach if the Department is to avoid being hamstrung by administrative burdens. Accordingly, the Department respectfully requests that page 19 of the Proposed Order be revised as follows:

Analysis and Conclusions

Staff's recommendation is reasonable and it should be adopted. We do note, however, that the new statute created almost impossible time-frames, resulting in little time for in-depth analysis of the finer points of civil procedure. However, DCEO has statutory obligations pursuant to the new statute, which logically, makes it a joint petitioner. DCEO is directed, in the future, to make joint filings with the corresponding utilities, with an understanding that, DCEO's flexibility to administer and offer a consistent set of efficiency programs statewide should not be compromised by this approach.

C. The Collaborative Process.

The Department agrees that the Advisory Group made up of all interested parties to this docket is essential to the success of this endeavor. Implementation of the Portfolio and plans must remain flexible so that the utilities and DCEO are able to adapt their programs to meet market conditions and that all three petitioners should coordinate their efforts as much as possible to avoid confusion and discrimination. In order to ensure the sustainability and long-term effectiveness of the Efficiency Portfolio, the Commission must ensure that a consistent approach, to the extent possible, be taken with respect to the requirements and procedures that will be implemented in the Commonwealth Edison and Ameren territories.

The proposed order requires the Commission Staff to begin holding workshops in order "to develop standards regarding the accounting of the funds collected, the appropriate measure savings values, net to gross ratios, financial compliance, program

information tracking and reporting, and related issues." (Proposed Order at 33) In order to avoid duplicative efforts and potentially inconsistent results, any actions or deliberations of a stakeholder advisory group process must be coordinated with this Staff run workshop process.

Accordingly, the Department respectfully requests that page 25 of the Proposed Order be revised as follows:

How often the advisory committee meets and other procedural vehicles such as notice and comment for committee reviews of key issues should be determined by the Ameren and members of the committee. The advisory committee need not report to the Commission, however, the advisory committee should coordinate its efforts with the Staff led Workshops required by this Order. (Proposed Order at 33)

D. Banking of kWh Savings.

In its Proposed Order, the Commission declined to rule that Ameren should be allowed to "bank" any excess energy savings, noting that "Ameren . . . presented no evidence on this issue at trial." (Proposed Order, at 28) The Department requests that the Commission reconsider this finding and allow all three petitioners (ComEd, Ameren, and DCEO) to "bank" excess energy savings for two main reasons. First, the Department notes that there is sufficient evidence admitted at trial that would substantiate a finding by the Commission that Ameren should be allowed to "bank" excess energy savings. The Department notes that the testimony of both the Attorney General's witness, Mr. Mosenthal, and ICC Staff's witness, Mr. Zuraski, addressed this very issue (see AG Ex. 1.0 at 39-40 and ICC Staff Ex. 1.0 at 45-46). Furthermore, rebuttal testimony of the Department's witness, Mr. Feipel, also addressed the feasibility of allowing "banking" of excess energy savings in *either* the Ameren or ComEd dockets. (DCEO Ex. 2.0 at 13-14) Therefore, the Department would submit that there is proper evidentiary foundation for the Commission to rule that Ameren is allowed to "bank" excess energy savings, and that the parties have had adequate notice of this issue.

Second, because the Department is in the unique situation of being statutorily required to design and administer its portfolio of energy efficiency measures in conjunction with the utilities, any finding as to whether a utility is allowed to "bank" excess energy savings necessarily determines whether or not the Department is likewise allowed to "bank" such savings. The Department notes that the Commission's Proposed Order in the ComEd docket does grant ComEd the ability to "bank" up to 10 percent of the energy savings required by the statute in any given year. (Proposed Order in Docket No. 07-0540, at 40) The practical result of ComEd -- but not Ameren -- being allowed to "bank" savings is that the Department will be governed by different procedural standards depending on whether its measures are being implemented in either the ComEd or Ameren territories. This is precisely the scenario that the Department expressed concern about through Mr. Feipel's rebuttal testimony. (See DCEO Ex. 2.0 at 13-14) The Department submits that allowing one utility to bank savings while not permitting the other to do likewise would produce an unfeasible scenario for the Department, and therefore requests that the Commission reconsider its ruling on this issue.

Thus the Department respectfully requests that page 28 of the Proposed Order be revised as follows:

8. "Banking" Energy Savings

Although, in its pleadings, Ameren did not seek a Commission determination as to whether it should be allowed to "bank" any excess energy savings, it seeks a determination, now, for the first time in its posttrial brief, asking the Commission to find that it should be allowed to "bank" any excess energy savings and apply that excess in a subsequent year. Ameren, however, presented no evidence on this issue at trial. (*See,* Ameren posttrial brief at 88). ComEd sought Commission approval of its plan to "bank" energy savings, as well as cost overruns in its energy efficiency and demand response docket, docket 07-0540. Thus, now, Ameren also requests the authority to "bank" energy savings. (*Id.*).

The testimony of both the Attorney General's witness, Mr. Mosenthal, and ICC Staff's witness, Mr. Zuraski, addressed this issue (see AG Ex. 1.0 at 39-40 and ICC Staff Ex. 1.0 at 45-46). Furthermore, rebuttal testimony of the Department's witness, Mr. Feipel, also addressed the feasibility of allowing "banking" of excess energy savings in the Ameren docket. (DCEO Ex. 2.0 at 13-14)

Analysis and Conclusions

~~Because~~ Even though Ameren itself did not present this issue in its pleadings or prefiled testimony, before trial, ~~there was no notice to the parties on this issue, and there was no opportunity for the parties to be heard on it.~~we find that there is a proper evidentiary foundation for the Commission to rule that Ameren is allowed to "bank" excess energy savings and that the parties have had adequate notice of this issue. We grant Ameren the ability to "bank" up to 10 percent of the energy savings required by the statute in any given year in the same manner that we ordered for ComEd. (Order in Docket No. 07-0540, at 40) We order this to avoid the practical result of ComEd -- but not Ameren -- being allowed to "bank" savings so as to prevent the Department from being governed by different procedural standards depending on whether its measures are being implemented in either the Comed or Ameren territories. Further, allowing one utility to bank savings while not permitting the other to do likewise would produce an unfeasible scenario for the Department and hamper successful implementation of the Section 12-103 statewide. ~~We therefore decline to rule that Ameren should be allowed to "bank" any excess energy savings. We further note that while "banking" was discussed in docket 07-0540, ComEd's energy efficiency docket, Ameren is a separate, unrelated company. We cannot assume that the facts would be identical in the two dockets. We also cannot assume that Ameren seeks the same type of "banking" of energy savings that ComEd sought, or, that Ameren also seeks to "bank" excess expenditures, which was the case in ComEd's docket. Under these circumstances, Ameren is not permitted to bank excess energy savings or excess costs.~~

E. Hiring and Firing the Evaluator.

Given the critical nature of the measurement and evaluation of the petitioners' programs to the success of the Portfolio, it is important to ensure that the evaluation process is open, inclusive and transparent. For the evaluation to be an open and independent process, the key parties that developed this initiative must be included. The Department agrees with the Staff that the utility should not be given sole responsibility to hire and fire the evaluator. The best way to ensure an "independent" evaluation and to avoid unnecessary conflict is to have multi-party oversight of the evaluation contract.

Section 12-103(f)(7) does not preclude this approach to oversight of the evaluation. The statute does not state that the Commission need take on this task alone. To the contrary, the plain language of the legislation reads "The utility shall…" "(7)

Provide for an annual independent evaluation…" (220 ILCS 5/12 -103(f)). In other Sections of the Illinois Public Utilities Act, the plain language vests the Commission with sole responsibility. For example, Section 8-102 clearly establishes this relationship:

> "Any audit or investigation authorized pursuant to this Section *may be conducted by the Commission, or if the Commission is unable to adequately perform the audit or investigation, the Commission may arrange for it to be conducted by persons independent of the utility and selected by the Commission. The cost of an independent audit shall be borne initially by the utility*, but shall be recovered as an expense through normal ratemaking procedures." (220 ILCS 5/8.102).

If the General Assembly intended for solely the Commission to hire, and the utilities simply to fund the efficiency evaluator, then Section 12-103(f)(7) would read like this Section of the Act. Consequently, selection and management of the contract can and should be conducted as part of a multi-party effort.

Nonetheless, the Department agrees that it is appropriate for the Commissioners to maintain the ability to hire and fire the evaluator. The Commission as the ultimate judicial body in this regard should not and cannot relinquish this authority.

Accordingly, the Department respectfully requests that page 32 of the Proposed Order be revised as follows:

Analysis and Conclusions

We agree with Staff that there is no logical way to interpret Section 103(f)(7) other than to conclude that an evaluator who reports to the Commission is one, over which, this Commission has the ability to hire and fire. Any other conclusion would render the statutory language cited above meaningless. <u>The Commission Staff shall consult with ComEd, Ameren, the Department of Commerce and Economic Opportunity, the Office of the Attorney General, the Citizens Utility Board, and the Environmental Law and Policy Center in developing the evaluation RFP, selecting the independent evaluator and overseeing the evaluation.</u>

III. CONCLUSION

For the foregoing reasons, the Illinois Department of Commerce and Economic Opportunity respectfully requests that the Commission revise the Proposed Order as set forth herein.

Respectfully Submitted,

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